

September 24, 2012

Via electronic filing: <https://ftcpublishcommentworks.com/ftc/2012coppauleview>

Hon. Donald S. Clark  
Federal Trade Commission  
Office of the Secretary, Room H-135 (Annex E)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

Re: COPPA Rule Review, 16 CFR Part 312, Project No. P104503

Dear Secretary Clark:

The Digital Advertising Alliance (“DAA”) provides this comment in response to the Federal Trade Commission’s (“Commission”) supplemental proposal to amend the Children’s Online Privacy Protection Rule (the “Rule” or “COPPA Rule”).<sup>1</sup> As we clarified in our comments to the Proposed Rulemaking on the COPPA Rule, our Principles limit the collection and use of any data – not just data that are “personal information” as defined by the Children’s Online Privacy Protection Act (“COPPA”) – that can be associated with a particular computer or device for the purpose of engaging in online behavioral advertising where the entity collecting the data has actual knowledge the user is a child under 13. In this comment, the DAA recommends that the Commission work within the statutory framework set forth in the COPPA, and expresses support for an alternative approach to addressing third-party services and online behavioral advertising practices under the COPPA.

The DAA is a consortium of the nation’s largest media and marketing associations, including the American Association of Advertising Agencies (4A’s), the American Advertising Federation (AAF), the Association of National Advertisers (ANA), the Direct Marketing Association (DMA), the Interactive Advertising Bureau (IAB) and the Network Advertising Initiative (NAI). Representing over 5,000 member companies, these associations have come together in an initiative to develop and implement self-regulation for online data collection.

The Self-Regulatory Principles for Online Behavioral Advertising (“OBA Principles”) were released in 2009. The supplementary Self-Regulatory Principles for Multi-Site Data, released in 2011, extend comprehensive self-regulatory standards to cover the collection and use of Multi-Site Data that is collected from a particular computer or device regarding Web viewing over time and across non-affiliated Websites. Together, these Principles address seven key areas previously identified by the Commission: transparency; consumer control; data security; sensitive data protection; consent for retroactive material policy changes; consumer education; and meaningful enforcement.

The DAA was established to administer the implementation of these Self-Regulatory Principles across the Internet. The centerpiece of this implementation effort is the Advertising

---

<sup>1</sup> Federal Trade Commission, Supplemental Notice of Proposed Rulemaking and Request for Comment, Children’s Online Privacy Protection Rule, 77 Fed. Reg. 46643 (Aug. 6, 2012) (hereinafter “SNPRM”).

Option Icon, a universal symbol deployed within or near online behavioral advertisements or on Web pages where data is collected for online behavioral advertising purposes. By clicking on the icon, consumers are able to link to a clear disclosure statement regarding the participating company's online behavioral advertising data collection and use practices, as well as a universal and easy-to-use mechanism to opt out of further data collection and use.

As the entity charged with administering and implementing comprehensive industry self-regulatory standards for the collection of Web viewing data, we are concerned that the Commission's proposed rule, as set forth in its initial and supplemental notices, would be disruptive to the Internet ecosystem proving harmful to children under 13 and older consumers alike.

## **I. Working within the COPPA Framework**

While the DAA continues to believe that self-regulation is the appropriate approach to regulating the collection and use of web viewing data, the DAA supports the Commission's ongoing efforts toward protecting children while online, and believes that the Commission can continue its effort within the bounds of the existing COPPA framework. The Commission's supplemental proposal, however, to expand the definitions of the key terms "personal information" and "operator" and to establish a new "know or have reason to know" for third parties operating on unrelated sites or services goes beyond the scope of the COPPA.

The Commission proposes to extend the definition of the term "personal information" to Web viewing data tied to persistent identifiers and the term "website or online service directed to children" to include entities that know or have reason to know they are collecting data through another website or service directed to children under 13. These proposed changes appear to be an effort to capture third-party services such as advertising networks and social plug-ins under COPPA when they collect data for online behavioral advertising purposes, even where an entity has no knowledge that a specific user is a child and is not operating a service that is designed for children. This proposal goes beyond the scope and intent of the COPPA statute. The third-party services such as advertising networks that the SNPRM now targets provide the same general services across the Internet to all their publisher clients; the services are not directed at children, nor do third parties have the ability to know or control what entities incorporate their services. This activity has the same characteristics as collecting personal information from a user under 13 on a general audience website without knowledge. The Commission's proposal would create an unworkable result whereby COPPA captures third-party anonymous web viewing data where the third party does not know it is collected from a child under 13, but it does not capture individually identifiable information like full names, addresses, or phone numbers or other "personal information" (as currently defined) of a child under 13 collected without knowledge.

Under the proposed approach, third parties would collect data sufficient to implicate the COPPA, but not the type of data needed to provide parental notice and acquire parental consent. This result would require these entities to collect additional personal information as currently defined under the COPPA in order to comply with the statute – undermining the privacy-sensitive manner in which data is collected today – or cease providing such services, which would deprive consumers of the benefits (*e.g.*, free or low cost services and relevant content) resulting from such data collection.

## II. Alternative Approach

The DAA supports an alternative approach to addressing third-party services, including both online behavioral advertising practices and social plug-ins, where the operator lacks actual knowledge within the limits of the COPPA statute:

- The “support for internal operations” exception should cover an expanded and non-exhaustive list of routine business practices including, for example, statistical reporting, optimization, frequency capping and similar metrics, performance tracking, and logging for various administrative purposes. Refining this critical exception will ensure that routine and desirable business practices can continue, while still extending the COPPA Rule to cover data that is collected or used for OBA purposes or by social plug-ins.
- Third parties collecting non-personal persistent identifiers tied to anonymous web viewing data do not fall within what was intended as “directed to children.” Such third parties are not intentionally targeting their services to children so it cannot be assumed that they know that users are children. This activity has the same characteristics as collecting personal information from a user under 13 on a general audience website without knowledge.
- The Commission should clarify that a third party that collects non-personal persistent identifiers on another site or service, and does not collect any other data currently defined as “personal information,” has “actual knowledge” that it is collecting “personal information” from a child, but only in the following situations:
  - If the third party combines non-personal persistent identifiers with data that is currently defined as “personal information” or
  - If the third party offers age-based advertising segments that target children under 13. This constitutes knowledge that the audience is composed of children under 13.

Third parties’ use of non-personal persistent identifiers to collect anonymous web viewing data should not be covered by COPPA except in these cases. For the same reasons, operators of websites and online services should not be liable under COPPA for the data practices of independent third parties when operators do not own the data collected by such third parties.

The DAA looks forward to continuing to work with the Commission on the important issue of children’s privacy. Please contact Stu Ingis at \_\_\_\_\_ with any questions.

Sincerely,

DAA

cc: Michael Signorelli, Venable LLP